

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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BASEBALL QUICK, LLC,	:	
	:	
Plaintiff,	:	Civil Action No. 11-CV-01735
	:	(TPG)(MHD)
v.	:	ECF CASE
	:	
MLB ADVANCED MEDIA, L.P., ET AL.,	:	
	:	
Defendants.	:	
-----X	:	

**DECLARATION OF MATTHEW D. MURPHEY IN SUPPORT OF PLAINTIFF  
BASEBALL QUICK, LLC'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION  
FOR RELIEF PURSUANT TO RULE 56(D)**

I, Matthew D. Murphey, make the following Declaration under penalty of perjury.

1. I am a member in good standing of the bars of the States of California and Texas and am a partner with the law firm of Troutman Sanders LLP, litigation counsel for Plaintiff Baseball Quick, LLC ("Plaintiff" or "Baseball Quick" or "BQ") in this action against Defendant MLB Advanced Media, L.P. ("MLBAM"). The following facts are set forth in support of BQ's reply memorandum in support of its request for relief pursuant to Rule 56(d), Fed. R. Civ. P.

**Efforts to Obtain Discovery & Why the Efforts to  
Obtain Discovery Have Been Unsuccessful**

2. I have reviewed the Declaration of Dinn Mann in Support of Advanced Media's Combined Memorandum of Law in Reply in Support of Advanced Media's Motion for Summary Judgment of No Infringement and in Response to Baseball Quick's Motion for Relief Pursuant to 56(d) (Dkt. 74) ("Mann Dec. II"). In that declaration, Mr. Mann describes a recent audit of Condensed Games that was conducted by a team of Advanced Media employees. (Mann Dec. II ¶ 6). Mr. Mann does not state in which countries and on what platforms the Condensed Games

reviewed were made available to subscribers. Nor does he state that the content of the Condensed Games that have been made available to subscribers has been the same across all platforms and worldwide.

3. I am aware that MLBAM has made Condensed Games available in Japan. Attached is a true and correct copy of a press release stating that MLBAM launched Condensed Games in Japan in August 2010, in partnership with YouTube. (Ex. A). Mr. Mann never states that MLBAM's recent audit process included an audit of Condensed Games made available for viewing in Japan. I have been unable to access the Condensed Games made available in Japan due to restrictions on Internet users located in the United States. As such, BQ requires discovery into the content of all Condensed Games that have been made available anywhere worldwide.

4. Mr. Mann also characterizes the process of preparing Condensed Games recordings as a "subjective editing process." (Mann Dec. II ¶ 4). Yet, it has been reported that MLBAM uses a computer program to produce an initial cut of each Condensed Game excluding all but the action associated with each final pitch. *See* Ex. B, a true and correct copy of Snell, "Play Ball! A look inside MLB's high tech media center," Macworld.com (Mar. 31, 2011) ("the pitch-by-pitch metadata allows the system to create an initial cut of a condensed game based on the time code of the action pitches of each at-bat"). BQ requires discovery into the details of the steps implemented by this computer program as well as how the use of this program relates to the "subjective editing process" as asserted by MLBAM.

5. I have become aware of evidence that MLBAM has previously made changes to the content of Condensed Games. Attached is a true and correct copy of an Internet posting indicating that MLBAM changed the length of Condensed Games from 20-25 minutes to 5-8 minutes (Ex. C). This information once again confirms the need for discovery into the content of

all Condensed Games, including any and all changes to the editing process over time and any changes to the content of any specific Condensed Game.

6. Mr. Mann's second declaration lists the Condensed Games that were part of MLBAM's recent audit. This week, on August 10, 2011, I attempted to access some of these games through the MLB.com Media Center on the Internet. For at least the following four baseball games, no Condensed Game was available: 4/17/10 Rays at Red Sox; 5/22/10 Reds at Indians; 5/25/10 Yankees at Twins; and 5/26/10 Yankees at Twins. Attached are true and correct copies of screenshots showing that on 8/10/11 no Condensed Games are available for these games. (Ex. D, E, F, G). Mr. Mann listed all of these games as being part of the recent audit. (Mann Dec. II Ex. A p. 5, 17-18). This shows that MLBAM has been changing which Condensed Games are available and further highlights the need for discovery into the full content of all Condensed Games.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed at San Diego, California.

Dated: August 12, 2011

/s/ Matthew D. Murphey

Matthew D. Murphey, Esq.